

EDITOR'S PREFACE

This law of nature, being coeval with mankind and dictated by God Himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times; no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

—Sir William Blackstone.

Man has rights which human law does not create and therefore may not destroy. For thousands of years expressions of this conviction run through recorded history. Ancient philosophers in China, India, Israel, Greece and Rome recognized inherent values in Man and reasoned that rights which are the means of protecting and developing such values could not be the mere products of man-made laws alone. The ultimate source of such rights must be that superior law of nature to which valid human law must in all respects conform.

Christianity but clarified and confirmed the ancient concepts. God, as a Supremely Intelligent Creator, made all things in accordance with a Divine Plan of Creation — the “Eternal Law”— in which each created thing has a nature adapted to its end or purpose. The end and nature of Man are alike unique. He is endowed by his Creator with an immortal soul, a free will and an intellect. Even in the absence of direct Divine Revelation, Man can discern through the reason which is his natural endowment, at least the primary commands of the Eternal Law. This “participation” by Man through reason in the

Eternal Law is thus properly called the Natural Law. In disclosing the elemental duties of Man, the creature, to God, the Creator, the Natural Law necessarily establishes the rights without which these duties cannot be discharged. Rights with such an origin no human authority on earth may impair or destroy.

If, as Cardinal Newman once said, "the word 'God' constitutes a Theology in itself," the attribution of the inviolable character of basic human rights to the fact of Man's creation by God constitutes a Jurisprudence in itself. With precisely that Jurisprudence American Law began. The Declaration of Independence appealed to the "law of nature" as the reflection of "the law of nature's God." It affirmed as "self-evident" the tremendous truths that Man is the creature of a Divine Creator and is "endowed" by the Creator in the very act of creation with "certain rights." These rights are therefore "unalienable." It is to "secure" these rights that men institute government, conferring upon it the *powers* necessary for that purpose. The *powers* of government are "just" when they derive from the "consent of the governed" and when exercised not to destroy or impair, but to protect unalienable human rights by specifying in detail the modes of their enjoyment under the developing conditions of social life. Thus the American Constitution itself aims not at "creating" but at "securing" the "blessings of liberty." The "Thou shalt nots" of the Bill of Rights purport to stay the restless hand of government from unreasonable interference with rights already regarded as existing in virtue of natural law.

This "Natural Law" philosophy remained for generations the accepted philosophy of law of the American

Bench and Bar. In later days, however, it was laughed out of most American Law Schools and faded from the thinking of the lawyers and judges they had trained. New "isms" took its place. Secularism divorced Government from God. Pragmatism scorned "ethical absolutes" as criteria of human law. Positivism narrowed the "province of Jurisprudence" to the study of man-made law alone. The Relativist said "all concepts are relative." For Materialism there was "no significant difference between a man and a baboon or a grain of sand." In our own times, Nazis and Communists have erected legal systems with such "principles" as premises. They showed a shocked world only yesterday the inhuman but completely logical conclusions.

We prosecuted the Nazi leaders at Nuremberg. The defendants pleaded that no Positive Law at the time of the commission of the acts charged in the indictment had made these acts "crimes" indictable before the victors' court. The civilized world demurred to the plea. The demurrer could not be sustained without resort once more after decades of derision, to Natural Law doctrines which alone can show why there are wrongs against humanity which need no Positive Law to make them "crimes" and why there are rights of human beings which do not cease to be such even though all the man-made law on earth is, as to them, so strangely silent.

To the restoration of Natural Law philosophy the Natural Law Institute of Notre Dame's College of Law is dedicated. Through its annual convocations and through its special Natural Law Library, both so generously sponsored by Mr. Alvin A. Gould, the Institute's success has been noteworthy during the five short years

of its existence. The 1951 convocation, held in the College of Law, December 11-15, marks another significant step forward. Preceding the formal sessions at which the papers included in the present volume were read, a three-day series of informal round-table discussions of many phases of Natural Law doctrines was conducted. Members of the College of Law Faculty, including Professors John J. Broderick, Jr., Robert E. Sullivan, Thomas F. Broden and Roger P. Peters, acted as leaders. Participants included ten of the distinguished scholars who had appeared at previous convocations of the Institute. They were Hon. Richard O'Sullivan, K.C., Bencher of the Middle Temple, London; Dr. Edward S. Corwin of Princeton University; Reverend John C. Ford, S.J., Professor of Moral Theology, Weston College; Dr. Clarence E. Manion, Dean of the College of Law, Notre Dame; Dr. Gordon H. Gerould, Princeton University; Dr. Heinrich A. Rommen, College of St. Thomas; Hon. Joseph C. Hutcheson, Jr., Chief Judge, United States Court of Appeals, Fifth Circuit; Mr. Felix Morley, formerly President of Haverford College; Mr. George E. Sokolsky, author and journalist; Dr. Maurice Le Bel, Professor of Greek, Laval University, and the following members of the 1951 panel: Rabbi Solomon Freehof, Rodef Shalom Temple, Pittsburgh; Dr. Khalifa Abdul Hakim of the Institute of Islamic Culture, Lahore, Pakistan; Dr. M. S. Sundaram, Cultural Attaché, Embassy of India, Washington; and Dr. Hu Shih, formerly Chinese Ambassador to the United States.

At the conclusion of the informal round-table discussions, the papers presented in this volume were read. They represent an undertaking perhaps without precedent in

the history of Natural Law scholarship. Under the distinguished Presidency of the Most Reverend J. Francis A. McIntyre, Archbishop of Los Angeles, whose introductory address is printed here, five scholars of international reputation — all non-Christians — for two days explored the place of Natural Law in their respective philosophical and religious traditions. Their papers are presented here exactly as they were read at the Convocation. Exponents of Natural Law philosophy have maintained that the law of nature is written on the hearts of all men as a direct endowment from their Creator and that Natural Law therefore, as correctly understood, is not a peculiarly Catholic or Christian philosophical or religious tenet or doctrine, but the possession of all men for all time and everywhere, whether Jew or Gentile, black or white, yellow, red or brown. The very grandeur of the concept thrills the hearts of all those who in the day of the Hydrogen Bomb desperately seek a lasting foundation for that "One World" to which the course of events is driving us, and who therefore ask for more than merely pragmatic organizational devices and schemes. In the 1951 Convocation the Natural Law Institute, extending complete academic freedom to its lecturers, subjected the grandeur of the concept of the universality of the natural law, to the candid criticism of scholarship. In the informal summary given by Mr. George E. Sokolsky and in the more extended paper by Reverend Theodore M. Hesburgh, C.S.C., Executive Vice-President of Notre Dame, the reader has before him two scholarly estimates of the extent to which the grandeur of the concept was re-affirmed. Whatever the reader's opinion, it may be said that in the five major papers here included

a scholarly point of departure has been established for future study in this field.

To all who helped in so many ways in the preparation of the 1951 program and in the arrangement of the countless details involved, the Editor wishes to express the gratitude of the University, the Faculty and the student body. The debt of the Institute continues to Reverend John J. Cavanaugh, C.S.C., President, to Dr. Clarence E. Manion, Dean of the College of Law, to Mr. Alvin A. Gould, again the Institute's sponsor, to Mr. R. Emmett Fitzgerald, Student Chairman, and to Mrs. George Howard, the Institute's efficient secretary.

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